MONTANA LEGISLATIVE HISTORY

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H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	1-11	✓ C	Hearing Date(s)	2-25	✓ C
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Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HOUSE BILL NO. 39

INTRODUCED BY KVAALEN

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO MINORS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 10-204, R.C.M. 1947, is amended to read as follows:

"10-204. Age certificates. Upon ~~obtaining~~ attaining the age of ~~sixteen~~ 16 years any child may make application to the commissioner of labor and industry for an age certificate, which must be presented to any employer with whom ~~such~~ the child ~~may seek~~ seeks employment. The employer, if such employment be given, must countersign the certificate and return ~~the same~~ it to the commissioner ~~of said bureau~~, who shall keep ~~the same~~ it on file in his office. Any person, firm, company, association, or corporation who employs or permits to be employed in any occupation prohibited by ~~section~~ 10-201, any child without such certificate showing the child to be at least ~~sixteen~~ 16 years of age, ~~shall be~~ is guilty of a misdemeanor and punishable as hereinafter provided, should such child prove to be less than ~~sixteen~~ 16 years of age."

Section 2. Section 10-205, R.C.M. 1947, is amended to read as follows:

"10-205. Enforcement ~~of act~~. To enforce this act the commissioner of labor and industry, ~~the bureau of child and animal protection~~, and ~~all~~ each county ~~attorneys~~ attorney shall, each upon ~~their~~ his own volition, or upon the sworn complaint of any reputable citizen that this act is being violated, make prosecutions for such violations."

Section 3. Section 10-1206, R.C.M. 1947, is amended to read as follows:

"10-1206. Jurisdiction of the court. (1) The court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care, or concerning any person under ~~twenty-one (21)~~ years of age charged with having violated any law of the state or ordinance of any city or town prior to having become ~~eighteen (18)~~ years of age.

(2) Justice, municipal, and ~~police~~ city courts shall have concurrent jurisdiction with the youth court over all traffic and fish and game violations alleged to have been committed by a youth, except that the following alleged violations are under the exclusive jurisdiction of the court:

(a) driving while intoxicated as defined in ~~section~~ 32-2142, ~~R.C.M. 1947~~;

(b) failing to stop at an accident as defined in ~~section~~ 32-1202~~,~~ ~~R.C.M. 1947~~; and

(c) driving without a valid license or permit as defined in ~~sections~~ 31-125 and 31-127~~,~~ ~~R.C.M. 1947~~, after having been previously convicted of the same offense."

Section 4. Section 10-1210, R.C.M. 1947, is amended to read as follows:

"10-1210. Consent adjustment without petition. (1) Before a petition is filed, the probation officer may enter into an informal adjustment~~,~~ and give counsel and advice to the youth and other interested parties~~,~~ if it appears:

(a) the admitted facts bring the case within the jurisdiction of the court;

(b) counsel and advice without filing a petition would be in the best interests of the child and the public.

(2) Any probation or other disposition imposed under this section against any youth must conform to the following procedures:

(a) Every consent adjustment shall be reduced to writing~~,~~ and signed by the youth and his parents or the person having legal custody of the youth.

(b) Approval by the youth court judge ~~shall be~~ is required ~~where~~ if the complaint alleges commission of a felony or ~~where~~ if the youth has been or will be in any way detained.

(3) An incriminating statement relating to any act or omission constituting delinquency or need of supervision made by the participant to the person giving counsel or advice in the discussions or conferences incident thereto ~~shall~~ may not be used against the declarant in any proceeding under this act, nor ~~shall~~ may the incriminating statement be admissible in any criminal proceeding against the declarant.

(4) The following dispositions may be imposed by informal adjustment:

(a) ~~Probation~~ probation;

(b) ~~Placement~~ placement of the youth in a licensed foster home or other home approved by the court;

(c) ~~Placement~~ placement of the youth in a private agency responsible for the care and rehabilitation of such a youth, including but not limited to~~,~~ a district youth guidance home;

(d) ~~Transfer~~ transfer of legal custody of the youth to the department of institutions, ~~provided, however,~~ that such commitment ~~shall~~ does not authorize the department of institutions to place the youth in a detention facility~~,~~ ~~as defined by this act~~ and such commitment ~~shall~~ may not exceed a period of ~~six (6)~~ months without a subsequent order of the court, after notice and hearing."

Section 5. Section 10-1217, R.C.M. 1947, is amended to

read as follows:

"10-1217. Service of summons. (1) Any youth who is the subject of a proceeding under this act must be personally served with summons at least ~~five (5)~~ days before the time stated for appearance.

(2) Service of summons on all other persons designated in ~~subsection (1) of section~~ 10-1216(1) shall be made in accordance with Rule 4(D) of the Montana ~~Rules~~ rules of ~~Civil Procedure~~ civil procedure, except that in all cases service shall be completed at least ~~five (5)~~ days before the time stated for appearance.

(3) If a party referred to in subsection (2) herein is not personally served before a hearing and has not secluded himself with an attempt to delay or disrupt any proceeding ~~under this act~~, such party may appear within a reasonable time subsequent to the hearing and, on motion to the court, request a rehearing. The motion may be granted at the discretion of the judge if a rehearing would be in the best interest of the youth.

(4) The court may authorize payment from county funds of costs of service and necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

(5) An actual abandonment of a youth by his parent or parents shall constitute a waiver of summons and notice

requirements ~~in this act~~ by the parent or parents. A return endorsed upon the summons showing inability to serve summons ~~in compliance with section 10 (2) of this act~~ constitutes prima facie evidence of actual abandonment.

(6) The youth court may, in the interests of justice, shorten the notice requirements contained herein, and such notice of shortened time shall be endorsed on the summons.

(7) A party, other than the youth, may waive service of summons on himself by written stipulation or by voluntary appearance at the hearing. If the youth is present at the hearing, his counsel may waive service of summons in his behalf."

Section 6. Section 10-1218, R.C.M. 1947, is amended to read as follows:

"10-1218. Basic legal rights. (1) When a youth alleged to be a delinquent youth or a youth in need of supervision is taken into custody, the following requirements must be met:

(a) ~~the~~ The youth shall be immediately and effectively advised of his constitutional rights and his rights under this ~~Act~~act.

(b) ~~the~~ The youth may waive such rights under the following situations:

(i) when the youth is under the age of ~~twelve (12)~~ years, the parents of the youth may make an effective

waiver;

(ii) when the youth is over the age of ~~twelve (12)~~ years, and the youth and his ~~parent~~ parents agree, they may make an effective waiver; and

(iii) when the youth is over the age of ~~twelve (12)~~ years and the youth and his parents do not agree, the youth may make an effective waiver only with advice of counsel.

(c) In a proceeding alleging a youth to be a delinquent youth:

(i) ~~An~~ an ~~extra-judicial~~ extrajudicial statement that would be constitutionally inadmissible in a criminal matter ~~shall~~ may not be received in evidence;

(ii) ~~Evidence~~ evidence illegally seized or obtained ~~shall~~ may not be received in evidence to establish the allegations of a petition against a youth; and

(iii) ~~An extra-judicial~~ an extrajudicial admission or confession made by the youth out of court is insufficient to support a finding that the youth committed the acts alleged in the petition unless it is corroborated by other evidence.

(2) Title 95, ~~R.C.M. 1947,~~ shall apply to all law enforcement investigations relating to a complaint alleging a delinquent youth or youth in need of supervision, except that:

(a) ~~No~~ no youth ~~shall~~ may be fingerprinted or photographed for criminal identification purposes except by

order of the youth court judge;

(b) ~~No~~ no fingerprint records or photographs ~~shall~~ may be filed with the federal bureau of investigation, state of Montana identification bureau, or any other than the originating agency, except for sending the fingerprints or photographs to any law enforcement agency for comparison purposes in the original investigation;

(c) ~~At~~ at such time as the proceedings in the matter, including appeals, are complete, the fingerprint records and photographs shall be destroyed. ~~, except that~~ However, such fingerprint records and photographs may be retained by the originating agency for a specific period when ordered by the court for good cause shown.

(3) In all proceedings on a petition alleging a delinquent youth or youth in need of supervision ~~as set forth in subsection (1) of this section~~, the youth, ~~and the~~ parents ~~and~~ or guardian of the youth shall be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained, or if it appears that counsel will not be retained, counsel shall be appointed for the youth, unless the right to appointed counsel is waived by the youth and the parents or guardian. Neither the youth nor his parent or guardian may waive counsel if commitment to a detention facility or a youth

forest camp or to the department of institutions for a period of more than ~~six (6)~~ months may result from adjudication.

(4) The court, at any stage of a proceeding on a petition under this act, may appoint a guardian ad litem for a youth if the youth has no parent or guardian appearing in his behalf, or if their interests conflict with those of the youth. A party to the proceeding or an employee or representative of a party ~~shall~~ may not be appointed as guardian ad litem.

(5) In a proceeding on a petition, a party is entitled to:

(a) the opportunity to introduce evidence and otherwise be heard on the party's own behalf;

(b) confront and cross-examine witnesses testifying against the party; and

(c) admit or deny the allegations against the party in the petition.

(6) Persons afforded rights under this act shall be advised of those rights and any other rights existing under law at the time of their first appearance in a proceeding on a petition under the Montana Youth Court Act and at any other time specified in ~~the Youth Court Act~~ that act or other law.

(7) All ~~post-trial~~ posttrial motions and other

remedies available to an adult in a criminal proceeding under the Montana Code of Criminal Procedure ~~shall be~~ are available to a youth proceeded against under this act."

Section 7. Section 10-1220, R.C.M. 1947, is amended to read as follows:

"10-1220. Adjudicatory hearing. (1) Prior to any adjudicatory hearing, the court shall determine whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses alleged in the petition, the youth, his parent, guardian, or attorney may demand a jury trial on such contested offenses~~, in~~ In the absence of such demand, a jury trial is waived. If the youth denies some offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court judge. The adjudicatory ~~hearings~~ hearing shall be set forthwith and accorded a preferential priority.

(2) An adjudicatory hearing shall be held to determine whether the contested offenses are supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in need of supervision. If the hearing is before a jury, the jury's function shall be to determine whether the youth committed the contested offenses~~, if~~ If the hearing is before the youth court judge without a jury, the judge shall make and record his findings on all issues. If the allegations of the petitions are not established at

the hearing, the youth court shall dismiss the petition and discharge the youth from custody.

(3) An adjudicatory hearing shall be recorded verbatim by whatever means the court ~~deems~~ considers appropriate.

(4) The youth charged in a petition must be present at the hearing and, if brought from detention to the hearing, ~~shall~~ may not appear clothed in institutional clothing.

(5) In a hearing on a petition under this section, the general public shall be excluded and only such persons ~~admitted~~ as have a direct interest in the case may be admitted, ~~;~~ except that when a hearing in the court is held on a written petition charging the commission of a felony, persons with a legitimate interest in the proceeding, including representatives of public information media, ~~shall~~ may not be excluded from the hearing.

(6) If, ~~the court finds~~ on the basis of a valid admission by a youth of the allegations of the petition or ~~if~~ after the hearing required by this section, a youth is found to be a delinquent youth or a youth in need of supervision, the court shall schedule a dispositional hearing under this act.

(7) When a jury trial is required in a case, it may be held before the regular trial panel. If the regular panel is not in attendance, the court may draw a jury from jury box No. 3."

Section 8. Section 10-1224, R.C.M. 1947, is amended to read as follows:

"10-1224. Consent decree with petition. (1) At any time after the filing of a petition alleging delinquency or need of supervision, and before the entry of a judgment, the court may, on motion of counsel for the youth, or on the court's own motion, suspend the proceedings and continue the youth under supervision under terms and conditions negotiated with probation services and agreed to by all necessary parties. The court's order continuing the child under supervision under this section shall be known as a "consent decree". The procedures used and dispositions permitted ~~when~~ under this section shall conform to the procedure and disposition specified in ~~section~~ 10-1210, ~~R.C.M. 1947,~~ relating to consent adjustments without petition.

(2) If the youth or his counsel objects to a consent decree, the court shall proceed to findings, adjudication, and disposition of the case.

(3) If, either prior to discharge by probation services, or expiration of the consent decree, a new petition alleging delinquency or need of supervision is filed against the youth, or if the youth fails to fulfill the expressed terms and conditions of the consent decree, the petition under which the youth was continued under

supervision may be reinstated in the discretion of the county attorney in consultation with probation services. In the event of reinstatement, the proceeding on the petition shall be continued to conclusion, as if the consent decree had never been entered.

(4) A youth who is discharged by probation services or who completes a period under supervision without reinstatement of the original petition ~~shall~~ may not again be proceeded against in any court for the same offense alleged in the petition, and the original petition shall be dismissed with prejudice. Nothing in this subsection precludes a civil suit against the youth for damages arising from his conduct.

(5) In all cases where the terms of the consent decree shall extend for a period in excess of ~~six (6)~~ months, the probation officer shall ~~submit a report~~ at the end of each ~~six (6) month~~ 6-month period submit a report which shall be reviewed by the court."

Section 9. Section 10-1229, R.C.M. 1947, is amended to read as follows:

"10-1229. Transfer to criminal court. (1) After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) the youth charged was ~~sixteen (16)~~ years of age or more at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(i) criminal homicide as defined in ~~section~~ 94-5-101, ~~R.C.M. 1947~~;

(ii) arson as defined in ~~section~~ 94-6-104, ~~R.C.M. 1947~~;

(iii) aggravated assault as defined in ~~section~~ 94-5-202, ~~R.C.M. 1947~~;

(iv) robbery as defined in ~~section~~ 94-5-401, ~~R.C.M. 1947~~;

(v) burglary or aggravated burglary as defined in ~~section~~ 94-6-204, ~~R.C.M. 1947~~;

(vi) sexual intercourse without consent as defined in ~~section~~ 94-5-503, ~~R.C.M. 1947~~;

(vii) aggravated kidnapping as defined in ~~section~~ 94-5-303, ~~R.C.M. 1947~~;

(viii) possession of explosives as defined in ~~section~~ 94-6-105, ~~R.C.M. 1947~~;

(ix) criminal sale of dangerous drugs for profit as included in ~~section~~ 54-132, ~~R.C.M. 1947~~;

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing will be to the youth court without a jury; ~~and~~

(c) notice in writing of the time, place, and purpose

of the hearing is given to the youth, his counsel, and his parents, guardian, or custodian at least ~~ten--(10)~~ days before the hearing; and

(d) the court finds upon the hearing of all relevant evidence that there are reasonable grounds to believe that:

(i) the youth committed the delinquent act alleged; ~~and~~

(ii) the seriousness of the offense and the protection of the community ~~requires~~ require treatment of the youth beyond that afforded by juvenile facilities; and

(iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

(2) In transferring the matter of prosecution to the district court, the court shall also consider the following factors:

(a) the sophistication and maturity of the youth, determined by consideration of his home, environmental situation, and emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions;

(c) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of

the youth by the use of procedures, services, and facilities currently available to the youth court.

(3) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the court was waived and the case transferred to district court.

(4) The transfer terminates the jurisdiction of the court over the youth with respect to the acts alleged in the petition. No youth ~~shall~~ may be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section.

(5) Upon order of the court transferring the case to the district court, the county attorney shall file the information against the youth without unreasonable delay.

(6) If a youth is found guilty in district court of any of the offenses enumerated in subsection ~~(2)~~(1)(a) of this section and is sentenced to the state prison, his commitment shall be to the department of institutions which shall confine the youth in whatever institution it ~~deems~~ considers proper."

Section 10. Section 10-1230, R.C.M. 1947, is amended to read as follows:

"10-1230. Law enforcement records. (1) ~~All~~ No law enforcement records concerning a youth, except traffic

records, ~~shall--not~~ may be open to public inspection ~~nor~~ or their contents disclosed to the public unless so ordered by the court.

(2) Inspection of law enforcement records concerning a youth is permitted prior to the sealing of the records by:

(a) a youth court having the youth currently before it in any proceeding;

(b) the officers of agencies having legal custody of the youth and those responsible for his supervision after release;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the law enforcement agency;

(d) ~~Montana~~ law enforcement officers of Montana, when necessary for the discharge of their immediate duties;

(e) a district court in which the youth is convicted of a criminal offense, for the purpose of a presentence investigation;

(f) the county attorney; or

(g) the youth, his parent, guardian, or counsel."

Section 11. Section 10-1236, R.C.M. 1947, is amended to read as follows:

"10-1236. Foster homes. (1) The youth court may establish procedures for finding, maintaining, and administering temporary and permanent ~~licensed~~ foster homes

or other homes approved by the court for youth within the provisions of this act.

~~(2) The licensed foster homes established under this section shall be funded at a rate consistent with other foster homes established for other purposes under law.~~

~~(3)~~(2) All foster homes established by the youth court which are licensed by the department of social and rehabilitation services, ~~established~~ shall be financed by the department ~~of social and rehabilitation services~~ as set forth in ~~section~~ 71-210(b), ~~R.C.M. 1947~~.

(3) The licensed foster homes established under this section shall be funded at a rate consistent with other foster homes established for other purposes under law."

Section 12. Section 10-1242, R.C.M. 1947, is amended to read as follows:

"10-1242. Establishment of district youth guidance home program. The ~~legislative assembly~~ legislature, in recognition of the wide and varied needs of delinquent youths and youths in need of supervision of this state and of the desirability of meeting these needs on a community level to the fullest extent possible, and in order to reduce the need for custodial care in existing state institutions, establishes by ~~this act~~ 10-1242 through 10-1252 a district youth guidance home program to provide facilities and services for the rehabilitation of delinquent youths and

youths in need of supervision and establishes a program to provide such facilities and services through local nonprofit corporations and the department of institutions."

Section 13. Section 10-1246, R.C.M. 1947, is amended to read as follows:

"10-1246. Authority of youth court judge to commit delinquent youths and youths in need of supervision. A youth court judge is hereby authorized in his discretion to place a delinquent youth or a youth in need of supervision ~~to said~~ in a district youth guidance home for any period of time up to the child's ~~twenty-first~~ 21st birthday subject to the approval of its sponsoring nonprofit corporation or association."

Section 14. Section 10-1248, R.C.M. 1947, is amended to read as follows:

"10-1248. Continuing jurisdiction of youth court over youths. The youth court placing a delinquent youth or a youth in need of supervision ~~to~~ in a district youth guidance home shall retain continuing jurisdiction over ~~said~~ the youth until ~~said~~ the youth becomes ~~twenty-one (21)~~ years of age or is otherwise discharged by order of the court."

Section 15. Section 10-1249, R.C.M. 1947, is amended to read as follows:

"10-1249. Per diem charge to financially able parents. A youth court judge placing a delinquent youth or a youth in

need of supervision in a district youth guidance home may, if the parent or parents of the youth are financially able, without undue hardship, require the parents or parent to pay to the district youth guidance home a such per diem charge ~~not to exceed the per diem charge established by the department of institutions for each youth placed in the Montana children's center~~ as the judge may determine."

Section 16. Section 10-1251, R.C.M. 1947, is amended to read as follows:

"10-1251. Rules ~~and regulations~~. The director of the department of institutions ~~shall have power to~~ may adopt reasonable rules~~, regulations~~ and standards to carry out the administration and purposes of ~~this act~~ 10-1242 through 10-1252."

Section 17. Section 10-1252, R.C.M. 1947, is amended to read as follows:

"10-1252. Federal assistance. The department of institutions ~~is hereby authorized to~~ may make application for and to receive federal-aid money or other assistance which might ~~now or hereafter~~ become available for programs in the nature of the one created by ~~this act~~ 10-1242 through 10-1252."

Section 18. Section 10-1301, R.C.M. 1947, is amended to read as follows:

"10-1301. Definitions. (1) "Child" or "youth~~y~~", for

purposes of this act, means any person under ~~eighteen (18)~~ years of age.

(2) "Abuse" or "neglect" means:

(a) ~~The~~ the commission or omission of any act or acts which materially affect the normal physical or emotional development of a youth, ~~any~~ Any excessive physical injury, sexual assault, or failure to thrive, taking into account the age and medical history of the youth, shall be ~~presumptive of "material effect" and non-accidental; or~~ presumed to be nonaccidental and to "materially affect" the normal development of the youth.

(b) ~~The~~ the commission or omission of any act or acts by any person in the status of parent, guardian, or custodian who thereby and by reason of physical or mental incapacity or other cause, refuses, or, with state and private aid and assistance is unable, to discharge the duties and responsibilities for proper and necessary subsistence, education, medical, or any other care necessary for ~~his~~ the youth's physical, moral, and emotional well-being.

(3) "Dependent youth" means a youth who is abandoned, dependent upon the public for support, ~~and who is~~ destitute, ~~or is~~ without parents or guardian or under the care and supervision of a suitable adult, or who has no proper guidance to provide for his necessary physical, moral, and

emotional well-being. A child may be considered dependent and legal custody transferred to a licensed agency if the parent or parents voluntarily relinquish custody of ~~said~~ the child.

(4) "Youth in need of care" means a youth who is dependent or is suffering from abuse or neglect within the meaning of this act."

Section 19. Section 10-1309, R.C.M. 1947, is amended to read as follows:

"10-1309. Emergency protective service. (1) Any social worker of the department of social and rehabilitation services, the county welfare department, a peace officer, or county attorney who has reason to believe any youth is in immediate or apparent danger of violence or serious injury ~~shall have the authority to~~ may immediately remove the youth and place him in a protective facility. The department may make a request for further assistance from the law enforcement agency or take such legal action as may be appropriate.

(2) A petition shall be filed within ~~forty-eight (48)~~ hours of emergency placement of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents.

(3) The department of social and rehabilitation services and the county welfare department shall comply with

the ~~judicial--procedures~~ procedure set forth in ~~section~~ 10-1305~~,-R.C.M.-1947~~.

(4) The department of social and rehabilitation services and the county welfare department shall make such necessary arrangements for the youth's well-being as are required prior t the court hearing."

Section 20. Section 10-1310, R.C.M. 1947, is amended to read as follows:

"10-1310. Petitions. (1) The county attorney shall be responsible for filing all petitions alleging abuse, neglect, ~~and~~ or dependency. He may require all state, county, and municipal agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as may be necessary.

(2) Such petitions shall be given preference by the court in setting hearing dates.

(3) A petition alleging abuse, neglect, or dependency, is a civil action brought in the name of the state of Montana. The rules of civil procedure shall apply except as herein modified. Proceedings under a petition ~~shall-not-be~~ are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, shall be served personally with a copy of the petition and summons at least

~~five-(5)~~ days prior to the date set for hearing~~,~~ ~~if~~ If such person or agency resides out of state or is not found within the state, the rules of civil procedure relating to service of process in such cases shall apply.

(5) In the event service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party where in the opinion of the court the interests of justice require.

(6) ~~Where~~ If a parent of the child is a minor, notice shall be given to the minor parent's parents or guardian, and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this act ~~shall-have~~ has the right to appear.

(8) Except where the proceeding is instituted or commenced by a representative of the department of social and rehabilitation services, a citation shall be issued and served upon a representative of ~~social--and--rehabilitation services~~ the department prior to the court hearing.

(9) The petition shall:

(a) state the nature of the alleged abuse, neglect, or dependency;

(b) state the full name, age, and address of the youth, and the name and address of his parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth ~~and~~ of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services;

(b) temporary legal custody;

(c) limited legal custody;

(d) permanent legal custody, including the right to consent to adoption;

(e) appointment of guardian ad litem;

(f) any combination of the above or such other relief as may be required for the best interest of the youth.

(11) The petition may be modified for different relief at any time within the discretion of the court.

(12) The court may at any time on its own motion, or the motion of any party, appoint a guardian ad litem for the youth, or counsel for any indigent party.

(13) This section ~~shall~~ does not apply to a petition for temporary investigative authority and protective services."

Section 21. Section 10-1311, R.C.M. 1947, is amended to read as follows:

"10-1311. Petition ~~and----order~~ for temporary investigative authority and protective services. (1) In

cases where it appears that a youth is abused or neglected or is in danger of being abused or neglected, the county attorney may file a petition for temporary investigative authority and protective services.

(2) A petition for temporary investigative authority and protective services shall state the specific authority requested and the facts establishing probable cause that a youth is abused or neglected or is in danger of being abused or neglected.

(3) The petition for temporary investigative authority and protective services shall be supported by an affidavit signed by the county attorney or a department of social and rehabilitation services report stating in detail the facts upon which the request is based.

(4) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court may issue an order ~~(a)~~ granting such relief as may be required for the immediate protection of the youth.

(b) The order shall be served by a peace officer or a representative of the ~~state~~ department of social and rehabilitation services on the person or persons named therein.

(c) The order shall require the person served to ~~immediately~~ comply immediately with the terms thereof or, upon failure to so comply, to appear before the court

issuing the order on the date specified and show cause why he has not complied with the order. Except as otherwise provided herein, the rules of civil procedure shall apply.

(d) Upon a failure to comply or show cause the court may hold the person in contempt or place temporary legal custody of the youth with the ~~state~~ department of social and rehabilitation services until further order.

~~(e)~~(5) The court may grant the following kinds of relief:

~~(i)~~(a) right of entry by a peace officer or ~~state~~ department of social and rehabilitation services worker;

~~(ii)~~(b) medical and psychological evaluation of youth or parents, guardians, or person having legal custody;

~~(iii)~~(c) require the youth, parents, guardians, or person having legal custody to receive counseling services;

~~(iv)~~(d) place the youth in temporary medical facility or facility for protection of the youth;

~~(v)~~(e) require the parents, guardians, or other person having custody to furnish such services as the court may designate;

~~(vi)~~(f) such other temporary disposition as may be required in the best interest of the youth."

Section 22. Section 10-1320, R.C.M. 1947, is amended to read as follows:

"10-1320. Payment for ~~board, clothing, personal needs,~~

~~and room~~ support of dependent and neglected children -- reimbursement by county. (1) Whenever agreements are entered into by the ~~state~~ department of social and rehabilitation services for placing dependent and neglected children in approved family foster homes or licensed private institutions, ~~it shall be the duty of~~ the ~~state~~ department ~~to~~ shall pay by its check or draft, each month, from any funds appropriated for that purpose, the entire amount agreed upon for board, clothing, personal needs, and room of such children.

(2) On or before the ~~twentieth~~ 20th of each month the ~~state~~ department shall present a claim to the county of residence of such children for one-half the payments so made during the month. The county must make reimbursement to the ~~state~~ department within ~~twenty~~ 20 days after such claim is presented."

Section 23. Section 69-6101, R.C.M. 1947, is amended to read as follows:

"69-6101. ~~Consent~~ Validity of consent of minor for health services ~~when valid~~. (1) The consent to the provision of medical or surgical care or services by a hospital, public clinic, or the performance of medical or surgical care or services by a physician, licensed to practice medicine in this state may be given by a minor who professes or is found to meet any of the following

descriptions:

~~(1)~~(a) ~~A~~ a minor who is or was ever married~~,~~ or has had a child~~,~~ or graduated from high school~~,~~ or is emancipated; ~~or~~

~~(2)~~(b) ~~A~~ a minor who has been separated from his parent~~,~~ parents~~,~~ or legal guardian for whatever reason and is supporting himself by whatever means; ~~or~~

~~(3)~~(c) ~~A~~ a minor who professes or is found to be pregnant~~,~~ or afflicted with any reportable communicable disease~~,~~ including venereal disease~~,~~ or drug and substance abuse~~,~~ including alcohol. This self-consent only applies to the prevention~~,~~ diagnosis~~,~~ and treatment of those conditions specified in this subsection. The self-consent in the case of pregnancy~~,~~ venereal disease~~,~~ and drug and substance abuse also obliges the health professional~~,~~ if he accepts the responsibility for treatment~~,~~ to counsel the minor by himself or by referral to another health professional for counseling~~;~~ ~~or~~

~~(4)~~(d) ~~A~~ a minor who needs emergency care~~,~~ including transfusions~~,~~ without which his health will be jeopardized. ~~The~~ If emergency care is rendered~~,~~ the parent~~,~~ parents~~,~~ or legal guardian shall be informed as soon as practical except ~~in--conditions~~ under the circumstances mentioned in subsections (1)~~,~~ (2)~~,~~ (3)~~,~~ or (4) of this section~~;~~ ~~or~~

~~(5)~~(2) A minor who has had a child may give effective

consent to health service for his child~~;~~ ~~or~~

~~(6)~~(3) A minor may give consent for health care for his spouse if his spouse is unable to give consent by reason of physical or mental incapacity.~~"~~

Section 24. Section 69-6106~~,~~ R.C.M. 1947~~,~~ is amended to read as follows:

~~"~~69-6106. ~~Consent--of-minor-to-psychiatric~~ Psychiatric or psychological counseling ~~valid~~ under urgent circumstances. ~~The~~ When executed by a minor~~,~~ the consent to the providing of psychiatric or psychological counseling by a physician or psychologist licensed to practice in this state~~,~~ under circumstances ~~where~~ when the need for such counseling is urgent in the opinion of the physician or psychologist involved~~,~~ because of danger to the life~~,~~ safety~~,~~ or property of a minor or of other person or persons~~,~~ and the consent of the spouse~~,~~ parent~~,~~ custodian~~,~~ or guardian of the ~~said~~ minor cannot be obtained within a reasonable time to offset the ~~said~~ danger to life or safety~~,~~ ~~when-executed-by-the--said--minor~~ shall be as valid and binding as if the ~~said~~ minor ~~has~~ had achieved ~~his-or-her~~ majority~~,~~ ~~that~~ That is~~,~~ such minor ~~shall-be-deemed-to--have and--shall--have~~ has the same legal capacity to act~~,~~ and the same legal obligations with regard to the giving of such consent~~,~~ as a person of full legal age and capacity~~,~~ ~~the infancy-of-said-minor-and-any--contrary--provisions--of--law~~

~~notwithstanding~~, and such consent ~~shall~~ may not be subject to later disaffirmance by reason of such minority~~,~~. ~~and--the~~ The consent of no other person or persons (including, but not limited to a spouse, parent, custodian, or guardian) ~~shall--be~~ is necessary in order to authorize the psychiatric or psychological counseling ~~to~~ of such minor~~,~~. ~~provided, however,--that~~ However, no parent ~~shall~~ may be obligated for the cost of such counseling without his consent."

Section 25. Repealer. Sections 10-207, 10-208, 10-209, and 10-210, R.C.M. 1947, are repealed.

-End-

...EMBERS
...T L. MARKS
...IRMAN
...IS BARDANOUVE
...KVAALEN
...KITTRICK
...WEBER
...ECUTIVE DIRECTOR
...LA DUENSING
...MINISTRATIVE ASSISTANT
...NTA MOODY
...UPERVISOR, ALTER SYSTEM

Montana Legislative Council
State Capitol
Helena, 59601

SENATE MEMBERS
NEIL J. LYNCH
VICE CHAIRMAN
GLEN DRAKE
CARROLL GRAHAM
FRANK HAZELBAKER
DIANA DOWLING
DIRECTOR, LEGAL SERVICES; CODE COMMISSIONER
ROBERT PERSON
DIRECTOR, RESEARCH

LC 0036

1977 Legislature
Code Commissioner Bill - Summary

House Bill No. 39

TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO MINORS.

(This summary does not include discussion of routine form or grammatical changes.)

Section 1. 10-204. Changed "obtaining..." to "attaining the age of..." to correct apparent grammatical error.

Section 2. 10-205. Deleted reference to "bureau of child and animal protection". This bureau was abolished many years ago, according to Norma Cutone, head of the social services bureau of the department of social and rehabilitation services. She said the enforcement function in this section was not transferred to any other bureau per se.

Section 3. 10-1206(2). Changed "police court" to "city court" in accordance with 93-411.

Section 4. 10-1210(1). Added "and" in first sentence to correct apparent grammatical error.

Section 5. 10-1217(5). Deleted "in this act" in first sentence as redundant. Deleted reference to "section 18(2) of this act" as an incorrect and unnecessary reference. (Section 18(2) [R.C.M. 1947, 10-1218(2)] has nothing to do with service of summons.

Section 6. 10-1218(3). In (2) and (4) changed "shall" to "may" when used with negative. In (3) deleted the reference to "subsection (1) of this section" as an apparently erroneous reference. Subsection (1) deals only incidentally with proceeding on a petition, the primary provisions being found in 10-1215. It seems that no reference at all would be preferable, however, to a reference to 10-1215. Added "and" and "or" and deleted "and" for clarification.

Section 7. 10-1220. Subsection (1) changed "hearings" to "hearing" in the last sentence to correct apparent error. Subsection (6) - This subsection is grammatically incorrect and has questionable meaning. It has been rewritten for clar

Section 8. 10-1224(1). Changed "when" to "under" in the last sentence of this subsection to clarify meaning.

Section 9. 10-1229(6). Changed apparent incorrect reference to "subsection (2)(a) of this section" to "subsection (1)(a) of this section", the correct reference.

Section 10. 10-1230. Subsection (1) rewritten for grammatical clarity. Added "investigation" at end of subsection (e) as it appears a "presentence investigation" was intended. "Hearing" might also be a proper alternative.

Section 11. 10-1236(3). This subsection is meaningless. After considering conflicting recommendations from the social services bureau of the department of social and rehabilitation services and from several of the district probation officers, the proper wording appears to be as stated in the amendment. The youth court clearly has power to establish foster homes for its charges, but the department is not bound to license such homes. If it does license a home, this section requires that it provide the funds to operate the home.

Section 12. 10-1242. Changed "this act" to "sections 10-1242 through 10-1252". It is a primary objective of recodification to replace "this act" with the proper code reference. Beginning with 10-1242, the Youth Court Act incorporates a previous 1971 act establishing district youth guidance homes. That act had references to "this act", which language was carried over into the Youth Court Act. By a common rule of statutory construction "this act" means the latest amended version of the act. Hence, the references in 10-1242, 10-1251, and 10-1252, concerning rule-making power of the department of institutions and federal assistance authorization, thus would appear to apply to the entire Youth Court Act, rather than merely the act concerning district youth guidance homes, as originally intended. It appears doubtful that this intended, particularly the extension of the rule-making authority of the department of institutions. It appears rather that the 1971 district youth guidance home act was merely transferred, with no thought given to the effect of the words "this act". The sections comprising "this act" should be specified by the legislature.

Section 13. 10-1246. Changed "to" to "in" for grammatical reasons.

Section 14. 10-1248. Changed "to" to "in" for grammatical reasons.

Section 15. 10-1249. Allows a youth court to charge financially able parents a per diem charge equal to the charge established for the Montana Children's Center. However, there is no charge established for the children's center because there are no children there. Hence, there is no per diem charge which can be collected from parents of youths in a youth guidance home. Changed "not to exceed the per diem charge established by the department of institutions for each youth placed in the Montana Children's Center" to "...as the judge may determine".

Section 16. 10-1251. Same change as for 10-1242.

Section 17. 10-1252. Same change as for 10-1242.

Section 18. 10-1301. Reworded subsection (2)(a) for grammatical clarity. Reworded subsection (3) for grammatical clarity.

Section 19. 10-1309. Changed reference in 3rd paragraph to "judicial procedures set forth in section 10-1305" to "procedure set forth. . .", since there is no judicial procedure outlined in 10-1305. That section does, however, outline the action to be taken by the social worker and the department.

Section 20. 10-1310. In subsection (1), sentence 1, changed "and" to "or" for clarification. In subsection (6), added "parents" of the minor parent. The subsection apparently inadvertently included the minor parent's guardian but not his or her parent(s). Both should be included. In subsection (9)(c), changed "and" to "of" for clarification.

Section 21. 10-1311. Added "department of" preceding "social and rehabilitation services".

Section 22. 10-1320. Changed "with" to "within" to correct apparent grammatical error.

Section 23. 69-6101(4). Rewritten for clarity.

Section 24. 69-6106. Rewritten for clarity.

Section 25. Repeals 10-207 through 10-210. Employment of children in mines. There are three separate acts of the legislature codified in Chapter 2 of Title 10, all of which are redundant and directed toward the same objective. Sections 10-207 through 10-210 comprise the two earlier acts, and are repealed in this bill, since the latest act supersedes the earlier two.

JUDICIARY COMMITTEE

45th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 39	act to generally revise and clarify the law relating to minors	1-4-76	Kvaalen	Tuesday 11th	do pass	1-13-77
HB 43	act for the revision and clarification of the laws relating to the legislature and the laws	1-4-76	Kvaalen	Friday 7th	do pass as amended	1-14-77
HB 46	act to revise and clarify the laws relating to the judiciary and the courts of the state of Montana	1-4-76	Kvaalen	Friday 7 th	do pass as amended	1-14-77
HB 53	to delete an erroneous reference to federal civil rights laws	1-4-76	Marks	Tuesday 11th	"do pass"	1-11-77
HJR 5	resolution requesting the House & Senate request the attorney general to revise and update the model rules of administrative practice	1-4-76	Lorg Scully	Tuesday 11th	"do pass"	1-11-77
HB 65	act to create the postion of administrative law judge and a division of adminis-	1-5-76	Scully	Wednesday 12th	pass for the day Wed. 19th do pass as	1-24

JUDICIARY COMMITTEE

January 11, 1977

The regularly scheduled meeting of the House Judiciary Committee convened at 8:00 A. M. with all members present. Chairman John Scully presided.

Bills scheduled for hearing were House Bills #28, 29, 39, 53 22 and House Joint Resolution #5.

REPRESENTATIVE BENGSTON, District #59, SPONSOR of House Bills #28 and 29. Basically these bills will change the statutes to raise the drinking age from 18 to 19. These two bills are not meant to be an emotional issue. We want to approach the situation rationally and objectively. These problems are in our homes and in society in general. It is my hope that both sides can be aired today. Representative Bengston explained the bills, their ramifications and the penalties, the effective date, and that the matter would be submitted to the electors, at the general election to be held November 7, 1978.

REPRESENTATIVE ROTH, District #10 is the co-sponsor of these bills. She said the most forceful reasoning is to keep it out of the high schools, which now creates great difficulty. It drifts down into the junior high. The habitual use of alcohol at age 18 years is adversely affecting the lives of many young people. School administrators have asked us to address this problem.

PROPONENT, MAURICE HICKEY, spoke next. He is the executive secretary of the Montana Education Association. I represent 6500 members in the state of Montana. We are represented in every school system in the state. We are in support of having it put on the vallot.

PROPONENT, LÉONARD SARGENT, Executive Director of the Montana School Boards Association. He mentioned that 78% of 18 year olds are still in the senior year of high school, and presented the committee with written testimony, (exhibit attached).

PROPONENT, MAYNARD OLSON, representing the School Administration of Montana. This has been of great importance to me for some time. I agree with most of the other remarks that have been presented here. He read his written testimony, a copy of which is attached.

PROPONENT, HOWARD VOILES, representing the Association of School Principals. We in the Montana Association feel the same way. We would support and encourage passage of this bill. I don't feel the lower drinking age has caused many problems. It is the effect on our younger students. We urge the passage of these bills.

PROPONENT, CHAD SMITH, representing the Montana School Board Association. We encourage the passage of both of these bills. They are companion measures. One is to change the constitution and the other is more a question of mechanics. This is not like an unusual

exercise in police power, where you would have to be 18 to drive a motor vehicle, for example. It all depends on what you are talking about. Our greatest concern is for the effect the present law has on schools. The school system is set up to educate all of the students. Over age 19 you find very few individuals still going to high school. This bill is not offered as a means of discipline. We strongly urge passage.

PROPONENT, DAN MIZNER, League of Cities and Towns. 80 to 90% of the total population of 18 year olds drink alcoholic beverages. We would support House Bill #28 to raise the drinking age to 19.

PROPONENT, TED LECHNER, Juvenile Probation Officer, 13th Judicial District. I agree with the reasons these others have stated. He quoted several cases of juveniles where drinking caused accidents and other serious problems. He said he felt it is an insidious deterioration. I think this bill will not stop alcohol but will curtail it somewhat in our younger students, the 12, 13 and 14 year olds. They are exhibiting extreme drinking problems in many areas. 18 year olds have not shown good judgment by not allowing it to younger children.

OPPONENT, SENATOR CHET BLAYLOCK, District #35. I have been a teacher for 27 years. There was a mass meeting held in Helena of parents protesting booze in the schools. They were most irate and wanted to know what they could do about it. The year was 1922 and there was no legal booze. Before we lowered the drinking age here we always had beer busts. At one beer bust 90 cases of beer was consumed, and a large part of them were 7th graders, doing this drinking. I asked my students to be honest with me. When was the first time you got a drink, and some of them stated it was in the 6th grade. When I asked them where they got the booze, they said at home. Our schools say we have to control this. The school administrators want the legislature to do their job for them. What are they going to do that they can't do right now. Not one blessed thing. Senator Blaylock asked the question of the committee: How many of you drank before you were legal? 3/4 raised their hands. He went on to talk about the drinking problem, not only in this state but across the United States, 10 million in this country. He then talked about the high accident rate which he stated has always been high in this age bracket, because they are reckless. He concluded, "I hope you take a long look at this House Bill #28 and also #29 before you leap."

OPPONENT, ROBERT CAMPBELL. He was a constitutional delegate. He quoted from section 14 in the bill of rights. He mentioned the debates they had on this problem. He mentioned the power of the 18 year old vote and asked if you are going to tell them that they are not mature individuals. Are you going to say that these are not responsible people? Alcohol is the most dangerous drug, but this bill will do more harm than good. He mentioned several cases

he was familiar with concerning alcohol and drugs. He quoted Dante as saying that it was the scourge of civilization. He presented an editorial on drinking to the committee (attached) and concluded with the comment, we need to educate our young people that alcohol is the most dangerous drug.

OPPONENT: GRANT PARKER, Legislative Intern, representing the Montana Advisory Council on Children & Youth. There are strong questions to ask yourselves. It will not solve the problem. This legislature should take steps to educate away some of the abuses of alcohol. I think we shouuld look strongly at the issue and decide if it will stop it. Take educational steps to stop the use of alcohol. He then asked if the 18 year old would be tried in court for a crime as an adult or as a minor. The school district has the power to cope with the problem. They have the power to stop it.

OPPONENT: KEVIN HUNT, representing the Montana Youth Lobby. He mentioned that he represented several hundred students in the state of Montana. He said the bill would make criminals out of 18 year olds. We would be creating a new class of criminals. We would be denying 18 year olds the full protection of the law. He mentioned a survey he had studied and that 85.1% of the youths questioned viewed alcohol as more addictive than marijuana. Why is there no warning on the effects of alcohol. I would like to ask you to work for the defeat of this unfortunate proposal. He presented a copy of written testimony to the committee, (attached).

OPPONENT: RUTH POOLE, Montana Youth Lobby. She presented a number of petitions, protesting the passage of the bill. She felt a formal youth survey should be done. People should deal with the causes rather than the results.

OPPONENT: ERIN CORK, Missoula. This bill is not the best solution to the problem. Maturity doesn't necessarily come with age. The problem should be solved at the local level.

OPPONENT: DAVE HULL, Missoula, student. With rights comes responsibility. He made several comments about who is responsible and who is not. I would tend to resent being able to raise children, adopt children and not be able to drink. If I am mature enough to run for the legislature, I should be recognized as being responsible to handle liquor. Enforcement of the present laws would be better than a whole new set of stricter laws.

REPRESENTATIVE BENGSTON: In closing she presented several exhibits in support of House Bill #28 and 29. She stated, remember that every hour spent on discipline and enforcing the law is one hour less spent on education. She mentioned the greater risks of teenage drinking, the accidents, the inability to handle it, etc. Young people need to learn wholesome ways to face problems. She mentioned the higher incidence of drinking among juvenile delinquents

the behavior as more anti-social and a greater tendency to get into trouble. I am completely and wholly in favor of any education that will deter or alleviate alcohol. She mentioned that alcohol treatment centers that are now available to anyone with an alcohol problem.

REPRESENTATIVE HOLMES asked what would be the procedure if a student was caught at school with alcohol on the breath, and Representative Bengston stated, it would have to be determined by the courts.

There followed general discussion about the procedure of the court, enforcing of rules, the data available on actual drinking in the schools, etc.

Howard Voiles stated that he had not seen additional problems in the schools, since the lower drinking age. There is no evidence, about behavior at school. I am in disagreement with many educators about this. It was mentioned that about 75% of 18 year olds are still in high school.

Questions were asked of the student opponents whether they had assisted law enforcement agencies in disciplining any problem students. There was a general discussion about this.

There was discussion about the effect of the constitution and the proposed amendment, the constitutional language, whether drinking is a privilege or a right, whether the constitution says whether it is, etc. Discussion about school authority, school procedure.

CHAIRMAN SCULLY: (of Voiles and Olson) How many of your colleagues that are now school administrators that you have been associated with for more than 15 years, how many for 10 years, and how many within the last five years. I asked that question because of reputation and backgrounds, since most have been in the educational system for less than 5 years. There followed discussion of blackmailing of beer to 14 and 15 year olds by older students.

The hearing on House Bills #28 and 29 closed.

THE HEARING ON HOUSE JOINT RESOLUTION #5, SPONSORED by REPRESENTATIVE LORY, District #99. This is a recodification bill, to establish the office of Court Administrator.

Representative Dussault mentioned that the regulation was based on statute. The administrative code commissioner has no right of veto. The question was asked, if the legislature has to have annual sessions would it be possible for the legislature to have more control rather than delegate power to a committee. The

answer was that it is unconstitutional for the legislature to delegate power.

The motion was made by Representative Keyser, that HJR #5 "do pass". The motion was seconded. The question was called and the vote was unanimous.

THE HEARING OPENED ON HOUSE BILL #22.

PROPONENT, DAVE COGLEY, from the office of the code commissioner explained the bill. This is in conjunction with a recod bill, concerning the Montana Abortion Control Act. There was some discussion about notice should be given, consent, etc. and Representative Ramirez made the motion to rewrite and resubmit. This bill conflicts with the present abortion act. It should be clarified.

CHAIRMAN SCULLY appointed a sub-committee to do so, consisting of Representatives Holmes and Colburn to meet with Mr. Cogley and resubmit on Thursday.

THE HEARING ON HOUSE BILL #22 CLOSED.

THE HEARING OPENED ON HOUSE BILL #39.

DAVE COGLEY explained the recodification of this bill. It was mentioned that House Bill #39 is a companion bill to House Bill #22.

HEARING CLOSED ON HOUSE BILL #39.

HEARING OPENED ON HOUSE BILL #53.

DIANA DOWLING, attorney from the Code Commissioners office and staff attorney to the Judiciary Committee, spoke and explained the bill. She mentioned that Jim Moore, a representative serving in the 1975 session had noticed a discrepancy and brought it to her attention.

HEARING CLOSED ON HOUSE BILL #53.

REPRESENTATIVE EUDAILY moved "do pass". The motion was seconded and the motion carried with the vote unanimous.

THE MEETING ADJOURNED AT 12:30.

REPRESENTATIVE JOHN SCULLY, CHAIRMAN

Mary Ellen Connelly, Secretary

FORTY-FIFTH LEGISLATIVE SESSION

1977

COMMITTEE ON JUDICIARY

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
H.B. 4	1-27-77	3-9-77	3-10-77					3-10-77	
H.B. 5	1-25-77	2-21-77	3-19-77					3-19-77	
H.B. 14	1-15-77	2-23-77	2-23-77				2-23-77		
H.B. 22	1-21-77	2-25-77	2-25-77				2-25-77		
H.B. 27	1-15-77	2-23-77	2-25-77					2-25-77	
H.B. 28	1-22-77	2-24-77	3-19-77		WITHOUT RECOMMENDATION 3-19-77				
H.B. 29	1-22-77	2-24-77	3-19-77					3-19-77	
H.B. 36	1-15-77	2-24-77	2-24-77				2-24-77		
H.B. 39	1-21-77	2-25-77	2-25-77					2-25-77	
H.B. 43	1-22-77	3-5-77	3-8-77					3-8-77	
H.B. 46	1-22-77	3-5-77	3-7-77					3-7-77	
H.B. 53	1-15-77	2-24-77	2-24-77				2-24-77		
H.B. 71	3-2-77	3-21-77	3-21-77				3-21-77		
H.B. 72	1-21-77	3-3-77	3-3-77				3-3-77		
H.B. 74	1-15-77	3-3-77	3-3-77					3-3-77	
H.B. 77	3-2-77	3-12-77	3-12-77					3-12-77	

(Use Separate Sheet for Senate, House Bills, and Resolutions)

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 25, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman, on the above date at 9:35 a.m. in Room 442 of the State Capitol Building.

ROLL CALL:

All members of the committee were present except Senators Roberts and Warden who were excused.

WITNESSES PRESENT TO TESTIFY:

Dave Cogley - office of the Code Commissioner, Legislative Council
Bob Pyfer - office of the Code Commissioner, Legislative Council

CONSIDERATION OF HOUSE BILL 22:

Dave Cogley of the Code Commissioner's office explained the changes made in this recodification bill. He told the committee that the abortion act of 1974 is in conflict with this section of the law and that, therefore, this bill makes it so that the section now only applies to sterilization.

DISPOSITION OF HOUSE BILL 22:

Senator Olson moved that H.B. 22 BE CONCURRED IN. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 39:

Dave Cogley also explained this recodification bill and went over the changes that had been made for the committee.

DISPOSITION OF HOUSE BILL 39:

Senator Towe moved to amend page 29, section 23, line 24, by striking "subsection (1), (2), (3), or (4) of this section" and inserting "this subsection (1)". The motion carried unanimously. He then moved that H.B. 39 as amended BE CONCURRED IN. This motion carried unanimously also.

CONSIDERATION OF HOUSE BILL 27:

Bob Pyfer of the office of Code Commissioner with the Legislative Council explained the changes that had been made in this recodification bill.

DISPOSITION OF HOUSE BILL 27:

Senator Towe moved to strike the reference to "93-4336 and 93-5811" in the title and section 19, line 11, and that H.B. 27 as so amended BE CONCURRED IN. The motion carried unanimously.

ROLL CALL

JUDICIARY COMMITTEE

45th LEGISLATIVE SESSION - - 1977 Date 2-25-77

NAME	PRESENT	ABSENT	EXCUSED
TURNAGE, Jean, Chairman	✓		
ROBERTS, Joe, Vice-Chairman			✓
MURRAY, William	✓		
OLSON, Stuart	✓		
LENSINK, Everett	✓		
REGAN, Pat	✓		
TOWE, Tom	✓		
WARDEN, Margaret			✓

SENATE _____ COMMITTEE

BILL _____ VISITORS' REGISTER DATE _____

Please note bill no. (check one)

NAME	REPRESENTING	BILL #	SUPPORT	OPP
Dave Cosby	Code Commissioner	2243	✓	
Brent Rutledge	Correspondent & WP&R Rep.			
Jim Bruton	Mt Olive Churches	2243		

March 2, 1977

STANDING COMMITTEE REPORT
Senate Committee on Judiciary

That House Bill No. 39 be amended as follows:

1. Amend page 29, section 23, line 24.
Following: line 23
Strike: "subsection (1), (2), (3), or (4) of this section"
Insert: "this subsection (1)"

HOUSE BILL NO. 39

INTRODUCED BY KVAALEN

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO MINORS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 10-204, R.C.M. 1947, is amended to read as follows:

"10-204. Age certificates. Upon ~~obtaining~~ attaining the age of ~~sixteen~~ 16 years any child may make application to the commissioner of labor and industry for an age certificate, which must be presented to any employer with whom ~~such~~ the child ~~may seek~~ seeks employment. The employer, if such employment be given, must countersign the certificate and return ~~the same~~ it to the commissioner ~~of said bureau~~, who shall keep ~~the same~~ it on file in his office. Any person, firm, company, association, or corporation who employs or permits to be employed in any occupation prohibited by ~~section~~ 10-201, any child without such certificate showing the child to be at least ~~sixteen~~ 16 years of age, ~~shall be~~ is guilty of a misdemeanor and punishable as hereinafter provided, should such child prove to be less than ~~sixteen~~ 16 years of age."

Section 2. Section 10-205, R.C.M. 1947, is amended to read as follows:

"10-205. Enforcement ~~of act~~. To enforce this act the commissioner of labor and industry, ~~the bureau of child and animal protection,~~ and ~~all~~ each county ~~attorneys~~ attorney shall, each upon ~~their~~ his own volition, or upon the sworn complaint of any reputable citizen that this act is being violated, make prosecutions for such violations."

Section 3. Section 10-1206, R.C.M. 1947, is amended to read as follows:

"10-1206. Jurisdiction of the court. (1) The court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care, or concerning any person under ~~twenty-one~~ (21) years of age charged with having violated any law of the state or ordinance of any city or town prior to having become ~~eighteen~~ (18) years of age.

(2) Justice, municipal, and ~~police~~ city courts shall have concurrent jurisdiction with the youth court over all traffic and fish and game violations alleged to have been committed by a youth, except that the following alleged violations are under the exclusive jurisdiction of the court:

(a) driving while intoxicated as defined in ~~section~~ 32-2142, ~~R.C.M. 1947~~;

(b) failing to stop at an accident as defined in ~~section~~ 32-1202~~,~~ ~~R.C.M. 1947~~; and

(c) driving without a valid license or permit as defined in ~~sections~~ 31-125 and 31-127~~,~~ ~~R.C.M. 1947~~, after having been previously convicted of the same offense."

Section 4. Section 10-1210, R.C.M. 1947, is amended to read as follows:

"10-1210. Consent adjustment without petition. (1) Before a petition is filed, the probation officer may enter into an informal adjustment~~,~~ and give counsel and advice to the youth and other interested parties~~,~~ if it appears:

(a) the admitted facts bring the case within the jurisdiction of the court;

(b) counsel and advice without filing a petition would be in the best interests of the child and the public.

(2) Any probation or other disposition imposed under this section against any youth must conform to the following procedures:

(a) Every consent adjustment shall be reduced to writing~~,~~ and signed by the youth and his parents or the person having legal custody of the youth.

(b) Approval by the youth court judge ~~shall--be~~ is required ~~where~~ if the complaint alleges commission of a felony or ~~where~~ if the youth has been or will be in any way detained.

(3) An incriminating statement relating to any act or omission constituting delinquency or need of supervision made by the participant to the person giving counsel or advice in the discussions or conferences incident thereto ~~shall~~ may not be used against the declarant in any proceeding under this act, nor ~~shall~~ may the incriminating statement be admissible in any criminal proceeding against the declarant.

(4) The following dispositions may be imposed by informal adjustment:

(a) ~~Probation~~ probation;

(b) ~~Placement~~ placement of the youth in a licensed foster home or other home approved by the court;

(c) ~~Placement~~ placement of the youth in a private agency responsible for the care and rehabilitation of such a youth, including but not limited to~~,~~ a district youth guidance home;

(d) ~~Transfer~~ transfer of legal custody of the youth to the department of institutions, ~~provided, however,~~ that such commitment ~~shall~~ does not authorize the department of institutions to place the youth in a detention facility~~,~~ ~~as defined by this act~~ and such commitment ~~shall~~ may not exceed a period of ~~six (6)~~ months without a subsequent order of the court, after notice and hearing."

Section 5. Section 10-1217, R.C.M. 1947, is amended to

read as follows:

"10-1217. Service of summons. (1) Any youth who is the subject of a proceeding under this act must be personally served with summons at least ~~five (5)~~ days before the time stated for appearance.

(2) Service of summons on all other persons designated in ~~subsection (1) of section~~ 10-1216(1) shall be made in accordance with Rule 4(D) of the Montana ~~Rules~~ rules of ~~Civil Procedure~~ civil procedure, except that in all cases service shall be completed at least ~~five (5)~~ days before the time stated for appearance.

(3) If a party referred to in subsection (2) herein is not personally served before a hearing and has not secluded himself with an attempt to delay or disrupt any proceeding ~~under this act~~, such party may appear within a reasonable time subsequent to the hearing and, on motion to the court, request a rehearing. The motion may be granted at the discretion of the judge if a rehearing would be in the best interest of the youth.

(4) The court may authorize payment from county funds of costs of service and necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

(5) An actual abandonment of a youth by his parent or parents shall constitute a waiver of summons and notice

requirements ~~in this act~~ by the parent or parents. A return endorsed upon the summons showing inability to serve summons ~~in compliance with section 18 (2) of this act~~ constitutes prima facie evidence of actual abandonment.

(6) The youth court may, in the interests of justice, shorten the notice requirements contained herein, and such notice of shortened time shall be endorsed on the summons.

(7) A party, other than the youth, may waive service of summons on himself by written stipulation or by voluntary appearance at the hearing. If the youth is present at the hearing, his counsel may waive service of summons in his behalf."

Section 6. Section 10-1218, R.C.M. 1947, is amended to read as follows:

"10-1218. Basic legal rights. (1) When a youth alleged to be a delinquent youth or a youth in need of supervision is taken into custody, the following requirements must be met:

(a) ~~the~~ The youth shall be immediately and effectively advised of his constitutional rights and his rights under this ~~act~~act.

(b) ~~the~~ The youth may waive such rights under the following situations:

(i) when the youth is under the age of ~~twelve (12)~~ years, the parents of the youth may make an effective

waiver;

(ii) when the youth is over the age of ~~twelve (12)~~ years, and the youth and his ~~parent~~ parents agree, they may make an effective waiver; and

(iii) when the youth is over the age of ~~twelve (12)~~ years and the youth and his parents do not agree, the youth may make an effective waiver only with advice of counsel.

(c) In a proceeding alleging a youth to be a delinquent youth:

(i) ~~An~~ an ~~extra-judicial~~ extrajudicial statement that would be constitutionally inadmissible in a criminal matter ~~shall~~ may not be received in evidence;

(ii) ~~Evidence~~ evidence illegally seized or obtained ~~shall~~ may not be received in evidence to establish the allegations of a petition against a youth; and

(iii) ~~An extra-judicial~~ an extrajudicial admission or confession made by the youth out of court is insufficient to support a finding that the youth committed the acts alleged in the petition unless it is corroborated by other evidence.

(2) Title ~~95, R.C.M. 1947,~~ shall apply to all law enforcement investigations relating to a complaint alleging a delinquent youth or youth in need of supervision, except that:

(a) ~~No~~ no youth ~~shall~~ may be fingerprinted or photographed for criminal identification purposes except by

order of the youth court judge;

(b) ~~No~~ no fingerprint records or photographs ~~shall~~ may be filed with the federal bureau of investigation, state of Montana identification bureau, or any other than the originating agency, except for sending the fingerprints or photographs to any law enforcement agency for comparison purposes in the original investigation;

(c) ~~At~~ at such time as the proceedings in the matter, including appeals, are complete, the fingerprint records and photographs shall be destroyed, ~~except that~~ However, such fingerprint records and photographs may be retained by the originating agency for a specific period when ordered by the court for good cause shown.

(3) In all proceedings on a petition alleging a delinquent youth or youth in need of supervision ~~as set forth in subsection (1) of this section,~~ the youth, and the parents ~~and~~ or guardian of the youth shall be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained, or if it appears that counsel will not be retained, counsel shall be appointed for the youth, unless the right to appointed counsel is waived by the youth and the parents or guardian. Neither the youth nor his parent or guardian may waive counsel if commitment to a detention facility or a youth

forest camp or to the department of institutions for a period of more than ~~six--(6)~~ months may result from adjudication.

(4) The court, at any stage of a proceeding on a petition under this act, may appoint a guardian ad litem for a youth if the youth has no parent or guardian appearing in his behalf, or if their interests conflict with those of the youth. A party to the proceeding or an employee or representative of a party ~~shall~~ may not be appointed as guardian ad litem.

(5) In a proceeding on a petition, a party is entitled to:

(a) the opportunity to introduce evidence and otherwise be heard on the party's own behalf;

(b) confront and cross-examine witnesses testifying against the party; and

(c) admit or deny the allegations against the party in the petition.

(6) Persons afforded rights under this act shall be advised of those rights and any other rights existing under law at the time of their first appearance in a proceeding on a petition under the Montana Youth Court Act and at any other time specified in ~~the--Youth-Court-Act~~ that act or other law.

(7) All ~~post--trial~~ posttrial motions and other

remedies available to an adult in a criminal proceeding under the Montana Code of Criminal Procedure ~~shall--be~~ are available to a youth proceeded against under this act."

Section 7. Section 10-1220, R.C.M. 1947, is amended to read as follows:

"10-1220. Adjudicatory hearing. (1) Prior to any adjudicatory hearing, the court shall determine whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses alleged in the petition, the youth, his parent, guardian, or attorney may demand a jury trial on such contested offenses~~;~~. ~~In~~ In the absence of such demand, a jury trial is waived. If the youth denies some offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court judge. The adjudicatory ~~hearings~~ hearing shall be set forthwith and accorded a preferential priority.

(2) An adjudicatory hearing shall be held to determine whether the contested offenses are supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in need of supervision. If the hearing is before a jury, the jury's function shall be to determine whether the youth committed the contested offenses~~;~~. ~~if~~ If the hearing is before the youth court judge without a jury, the judge shall make and record his findings on all issues. If the allegations of the petitions are not established at

the hearing, the youth court shall dismiss the petition and discharge the youth from custody.

(3) An adjudicatory hearing shall be recorded verbatim by whatever means the court ~~deems~~ considers appropriate.

(4) The youth charged in a petition must be present at the hearing and, if brought from detention to the hearing, ~~shall~~ may not appear clothed in institutional clothing.

(5) In a hearing on a petition under this section, the general public shall be excluded and only such persons ~~admitted~~ as have a direct interest in the case may be admitted. ~~;~~ except that when a hearing in the court is held on a written petition charging the commission of a felony, persons with a legitimate interest in the proceeding, including representatives of public information media, ~~shall~~ may not be excluded from the hearing.

(6) If, ~~the court finds~~ on the basis of a valid admission by a youth of the allegations of the petition or ~~if~~ after the hearing required by this section, a youth is found to be a delinquent youth or a youth in need of supervision, the court shall schedule a dispositional hearing under this act.

(7) When a jury trial is required in a case, it may be held before the regular trial panel. If the regular panel is not in attendance, the court may draw a jury from jury box No. 3."

Section 8. Section 10-1224, R.C.M. 1947, is amended to read as follows:

"10-1224. Consent decree with petition. (1) At any time after the filing of a petition alleging delinquency or need of supervision, and before the entry of a judgment, the court may, on motion of counsel for the youth, or on the court's own motion, suspend the proceedings and continue the youth under supervision under terms and conditions negotiated with probation services and agreed to by all necessary parties. The court's order continuing the child under supervision under this section shall be known as a "consent decree". The procedures used and dispositions permitted ~~when~~ under this section shall conform to the procedure and disposition specified in ~~section~~ 10-1210, ~~R.C.M. 1947~~, relating to consent adjustments without petition.

(2) If the youth or his counsel objects to a consent decree, the court shall proceed to findings, adjudication, and disposition of the case.

(3) If, either prior to discharge by probation services, or expiration of the consent decree, a new petition alleging delinquency or need of supervision is filed against the youth, or if the youth fails to fulfill the expressed terms and conditions of the consent decree, the petition under which the youth was continued under

supervision may be reinstated in the discretion of the county attorney in consultation with probation services. In the event of reinstatement, the proceeding on the petition shall be continued to conclusion, as if the consent decree had never been entered.

(4) A youth who is discharged by probation services or who completes a period under supervision without reinstatement of the original petition ~~shall~~ may not again be proceeded against in any court for the same offense alleged in the petition, and the original petition shall be dismissed with prejudice. Nothing in this subsection precludes a civil suit against the youth for damages arising from his conduct.

(5) In all cases where the terms of the consent decree shall extend for a period in excess of ~~six (6)~~ months, the probation officer shall ~~submit a report~~ at the end of each ~~six (6) month~~ 6-month period submit a report which shall be reviewed by the court."

Section 9. Section 10-1229, R.C.M. 1947, is amended to read as follows:

"10-1229. Transfer to criminal court. (1) After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) the youth charged was ~~sixteen (16)~~ years of age or more at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(i) criminal homicide as defined in ~~section~~ 94-5-101, ~~R.C.M. 1947~~;

(ii) arson as defined in ~~section~~ 94-6-104, ~~R.C.M. 1947~~;

(iii) aggravated assault as defined in ~~section~~ 94-5-202, ~~R.C.M. 1947~~;

(iv) robbery as defined in ~~section~~ 94-5-401, ~~R.C.M. 1947~~;

(v) burglary or aggravated burglary as defined in ~~section~~ 94-6-204, ~~R.C.M. 1947~~;

(vi) sexual intercourse without consent as defined in ~~section~~ 94-5-503, ~~R.C.M. 1947~~;

(vii) aggravated kidnapping as defined in ~~section~~ 94-5-303, ~~R.C.M. 1947~~;

(viii) possession of explosives as defined in ~~section~~ 94-6-105, ~~R.C.M. 1947~~;

(ix) criminal sale of dangerous drugs for profit as included in ~~section~~ 54-132, ~~R.C.M. 1947~~,;

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing will be to the youth court without a jury; ~~and~~

(c) notice in writing of the time, place, and purpose

of the hearing is given to the youth, his counsel, and his parents, guardian, or custodian at least ~~ten--(10)~~ days before the hearing; and

(d) the court finds upon the hearing of all relevant evidence that there are reasonable grounds to believe that:

(i) the youth committed the delinquent act alleged; ~~and~~

(ii) the seriousness of the offense and the protection of the community ~~requires~~ require treatment of the youth beyond that afforded by juvenile facilities; and

(iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

(2) In transferring the matter of prosecution to the district court, the court shall also consider the following factors:

(a) the sophistication and maturity of the youth, determined by consideration of his home, environmental situation, and emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions;

(c) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of

the youth by the use of procedures, services, and facilities currently available to the youth court.

(3) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the court was waived and the case transferred to district court.

(4) The transfer terminates the jurisdiction of the court over the youth with respect to the acts alleged in the petition. No youth ~~shall~~ may be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section.

(5) Upon order of the court transferring the case to the district court, the county attorney shall file the information against the youth without unreasonable delay.

(6) If a youth is found guilty in district court of any of the offenses enumerated in subsection ~~(2)~~(1)(a) of this section and is sentenced to the state prison, his commitment shall be to the department of institutions which shall confine the youth in whatever institution it ~~deems~~ considers proper."

Section 10. Section 10-1230, R.C.M. 1947, is amended to read as follows:

"10-1230. Law enforcement records. (1) ~~All~~ No law enforcement records concerning a youth, except traffic

records, ~~shall--not~~ may be open to public inspection ~~nor~~ or their contents disclosed to the public unless so ordered by the court.

(2) Inspection of law enforcement records concerning a youth is permitted prior to the sealing of the records by:

(a) a youth court having the youth currently before it in any proceeding;

(b) the officers of agencies having legal custody of the youth and those responsible for his supervision after release;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the law enforcement agency;

(d) ~~Montana~~ law enforcement officers of Montana, when necessary for the discharge of their immediate duties;

(e) a district court in which the youth is convicted of a criminal offense, for the purpose of a presentence investigation;

(f) the county attorney; or

(g) the youth, his parent, guardian, or counsel."

Section 11. Section 10-1236, R.C.M. 1947, is amended to read as follows:

"10-1236. Foster homes. (1) The youth court may establish procedures for finding, maintaining, and administering temporary and permanent ~~licensed~~ foster homes

or other homes approved by the court for youth within the provisions of this act.

~~(2)--The--licensed--foster-homes-established-under-this section-shall-be-funded-at--a--rate--consistent--with--other foster-homes-established-for-other-purposes-under-law.~~

~~(3)~~(2) All foster homes established by the youth court which are licensed by the department of social and rehabilitation services, ~~established~~ shall be financed by the department ~~of-social-and-rehabilitation-services~~ as set forth in ~~section~~ 71-210(b)~~, R.C.M. 1947~~.

(3) The licensed foster homes established under this section shall be funded at a rate consistent with other foster homes established for other purposes under law."

Section 12. Section 10-1242, R.C.M. 1947, is amended to read as follows:

"10-1242. Establishment of district youth guidance home program. The ~~legislative--assembly~~ legislature, in recognition of the wide and varied needs of delinquent youths and youths in need of supervision of this state and of the desirability of meeting these needs on a community level to the fullest extent possible, and in order to reduce the need for custodial care in existing state institutions, establishes by ~~this act~~ 10-1242 through 10-1252 a district youth guidance home program to provide facilities and services for the rehabilitation of delinquent youths and

youths in need of supervision and establishes a program to provide such facilities and services through local nonprofit corporations and the department of institutions."

Section 13. Section 10-1246, R.C.M. 1947, is amended to read as follows:

"10-1246. Authority of youth court judge to commit delinquent youths and youths in need of supervision. A youth court judge is hereby authorized in his discretion to place a delinquent youth or a youth in need of supervision ~~to said~~ in a district youth guidance home for any period of time up to the child's ~~twenty-first~~ 21st birthday subject to the approval of its sponsoring nonprofit corporation or association."

Section 14. Section 10-1248, R.C.M. 1947, is amended to read as follows:

"10-1248. Continuing jurisdiction of youth court over youths. The youth court placing a delinquent youth or a youth in need of supervision ~~to~~ in a district youth guidance home shall retain continuing jurisdiction over ~~said~~ the youth until ~~said~~ the youth becomes ~~twenty-one (21)~~ years of age or is otherwise discharged by order of the court."

Section 15. Section 10-1249, R.C.M. 1947, is amended to read as follows:

"10-1249. Per diem charge to financially able parents. A youth court judge placing a delinquent youth or a youth in

need of supervision in a district youth guidance home may, if the parent or parents of the youth are financially able, without undue hardship, require the parents or parent to pay to the district youth guidance home a such per diem charge ~~not to exceed the per diem charge established by the department of institutions for each youth placed in the Montana children's center~~ as the judge may determine."

Section 16. Section 10-1251, R.C.M. 1947, is amended to read as follows:

"10-1251. Rules ~~and regulations~~. The director of the department of institutions ~~shall have power to~~ may adopt reasonable rules~~, regulations~~ and standards to carry out the administration and purposes of ~~this act~~ 10-1242 through 10-1252."

Section 17. Section 10-1252, R.C.M. 1947, is amended to read as follows:

"10-1252. Federal assistance. The department of institutions ~~is hereby authorized to~~ may make application for and ~~to~~ receive federal-aid money or other assistance which might ~~now or hereafter~~ become available for programs in the nature of the one created by ~~this act~~ 10-1242 through 10-1252."

Section 18. Section 10-1301, R.C.M. 1947, is amended to read as follows:

"10-1301. Definitions. (1) "Child" or "youth~~,~~" for

purposes of this act, means any person under ~~eighteen (18)~~ years of age.

(2) "Abuse" or "neglect" means:

(a) ~~The~~ the commission or omission of any act or acts which materially affect the normal physical or emotional development of a youth, ~~any~~ Any excessive physical injury, sexual assault, or failure to thrive, taking into account the age and medical history of the youth, shall be ~~presumptive of "material affect" and non-accidental; or~~ presumed to be nonaccidental and to "materially affect" the normal development of the youth.

(b) ~~The~~ the commission or omission of any act or acts by any person in the status of parent, guardian, or custodian who thereby and by reason of physical or mental incapacity or other cause, refuses, or, with state and private aid and assistance is unable, to discharge the duties and responsibilities for proper and necessary subsistence, education, medical, or any other care necessary for ~~his~~ the youth's physical, moral, and emotional well-being.

(3) "Dependent youth" means a youth who is abandoned, dependent upon the public for support, ~~and who is~~ destitute, ~~or is~~ without parents or guardian or under the care and supervision of a suitable adult, or who has no proper guidance to provide for his necessary physical, moral, and

emotional well-being. A child may be considered dependent and legal custody transferred to a licensed agency if the parent or parents voluntarily relinquish custody of ~~said~~ the child.

(4) "Youth in need of care" means a youth who is dependent or is suffering from abuse or neglect within the meaning of this act."

Section 19. Section 10-1309, R.C.M. 1947, is amended to read as follows:

"10-1309. Emergency protective service. (1) Any social worker of the department of social and rehabilitation services, the county welfare department, a peace officer, or county attorney who has reason to believe any youth is in immediate or apparent danger of violence or serious injury ~~shall have the authority to~~ may immediately remove the youth and place him in a protective facility. The department may make a request for further assistance from the law enforcement agency or take such legal action as may be appropriate.

(2) A petition shall be filed within ~~forty-eight (48)~~ hours of emergency placement of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents.

(3) The department of social and rehabilitation services and the county welfare department shall comply with

the ~~judicial--procedures~~ procedure set forth in ~~section~~ 10-1305~~,~~ ~~R.C.M. 1947~~.

(4) The department of social and rehabilitation services and the county welfare department shall make such necessary arrangements for the youth's well-being as are required prior t the court hearing."

Section 20. Section 10-1310, R.C.M. 1947, is amended to read as follows:

"10-1310. Petitions. (1) The county attorney shall be responsible for filing all petitions alleging abuse, neglect, ~~and~~ or dependency. He may require all state, county, and municipal agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as may be necessary.

(2) Such petitions shall be given preference by the court in setting hearing dates.

(3) A petition alleging abuse, neglect, or dependency, is a civil action brought in the name of the state of Montana. The rules of civil procedure shall apply except as herein modified. Proceedings under a petition ~~shall not be~~ are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, shall be served personally with a copy of the petition and summons at least

~~five (5)~~ days prior to the date set for hearing, ~~if~~ If such person or agency resides out of state or is not found within the state, the rules of civil procedure relating to service of process in such cases shall apply.

(5) In the event service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party where in the opinion of the court the interests of justice require.

(6) ~~Where~~ If a parent of the child is a minor, notice shall be given to the minor parent's parents or guardian, and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this act ~~shall have~~ has the right to appear.

(8) Except where the proceeding is instituted or commenced by a representative of the department of social and rehabilitation services, a citation shall be issued and served upon a representative of ~~social and rehabilitation services~~ the department prior to the court hearing.

(9) The petition shall:

(a) state the nature of the alleged abuse, neglect, or dependency;

(b) state the full name, age, and address of the youth, and the name and address of his parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth ~~and~~ of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services;

(b) temporary legal custody;

(c) limited legal custody;

(d) permanent legal custody, including the right to consent to adoption;

(e) appointment of guardian ad litem;

(f) any combination of the above or such other relief as may be required for the best interest of the youth.

(11) The petition may be modified for different relief at any time within the discretion of the court.

(12) The court may at any time on its own motion, or the motion of any party, appoint a guardian ad litem for the youth, or counsel for any indigent party.

(13) This section ~~shall~~ does not apply to a petition for temporary investigative authority and protective services."

Section 21. Section 10-1311, R.C.M. 1947, is amended to read as follows:

"10-1311. Petition ~~and----order~~ for temporary investigative authority and protective services. (1) In

cases where it appears that a youth is abused or neglected or is in danger of being abused or neglected, the county attorney may file a petition for temporary investigative authority and protective services.

(2) A petition for temporary investigative authority and protective services shall state the specific authority requested and the facts establishing probable cause that a youth is abused or neglected or is in danger of being abused or neglected.

(3) The petition for temporary investigative authority and protective services shall be supported by an affidavit signed by the county attorney or a department of social and rehabilitation services report stating in detail the facts upon which the request is based.

(4) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court may issue an order~~:~~ ~~(a)~~ granting such relief as may be required for the immediate protection of the youth.

(b) The order shall be served by a peace officer or a representative of the ~~state~~ department of social and rehabilitation services on the person or persons named therein.

(c) The order shall require the person served to ~~immediately~~ comply immediately with the terms thereof or, upon failure to so comply, to appear before the court

issuing the order on the date specified and show cause why he has not complied with the order. Except as otherwise provided herein, the rules of civil procedure shall apply.

(d) Upon a failure to comply or show cause the court may hold the person in contempt or place temporary legal custody of the youth with the ~~state~~ department of social and rehabilitation services until further order.

~~(e)~~(5) The court may grant the following kinds of relief:

~~(i)~~(a) right of entry by a peace officer or ~~state~~ department of social and rehabilitation services worker;

~~(ii)~~(b) medical and psychological evaluation of youth or parents, guardians, or person having legal custody;

~~(iii)~~(c) require the youth, parents, guardians, or person having legal custody to receive counseling services;

~~(iv)~~(d) place the youth in temporary medical facility or facility for protection of the youth;

~~(v)~~(e) require the parents, guardian, or other person having custody to furnish such services as the court may designate;

~~(vi)~~(f) such other temporary disposition as may be required in the best interest of the youth."

Section 22. Section 10-1320, R.C.M. 1947, is amended to read as follows:

"10-1320. Payment for ~~board, clothing, personal needs,~~

~~and room~~ support of dependent and neglected children -- reimbursement by county. (1) Whenever agreements are entered into by the ~~state~~ department of social and rehabilitation services for placing dependent and neglected children in approved family foster homes or licensed private institutions, ~~it shall be the duty of~~ the ~~state~~ department ~~to~~ shall pay by its check or draft, each month, from any funds appropriated for that purpose, the entire amount agreed upon for board, clothing, personal needs, and room of such children.

(2) On or before the ~~twentieth~~ 20th of each month the ~~state~~ department shall present a claim to the county of residence of such children for one-half the payments so made during the month. The county must make reimbursement to the ~~state~~ department within ~~twenty~~ 20 days after such claim is presented."

Section 23. Section 69-6101, R.C.M. 1947, is amended to read as follows:

"69-6101. ~~Consent~~ Validity of consent of minor for health services ~~when valid~~. (1) The consent to the provision of medical or surgical care or services by a hospital, public clinic, or the performance of medical or surgical care or services by a physician, licensed to practice medicine in this state may be given by a minor who professes or is found to meet any of the following

descriptions:

~~(1)~~(a) ~~A~~ a minor who is or was ever married~~,~~ or has had a child~~,~~ or graduated from high school~~,~~ or is emancipated; ~~or~~

~~(2)~~(b) ~~A~~ a minor who has been separated from his parent~~,~~ parents~~,~~ or legal guardian for whatever reason and is supporting himself by whatever means; ~~or~~

~~(3)~~(c) ~~A~~ a minor who professes or is found to be pregnant~~,~~ or afflicted with any reportable communicable disease~~,~~ including venereal disease~~,~~ or drug and substance abuse~~,~~ including alcohol. This self-consent only applies to the prevention~~,~~ diagnosis~~,~~ and treatment of those conditions specified in this subsection. The self-consent in the case of pregnancy~~,~~ venereal disease~~,~~ and drug and substance abuse also obliges the health professional~~,~~ if he accepts the responsibility for treatment~~,~~ to counsel the minor by himself or by referral to another health professional for counseling~~;~~ ~~or~~

~~(4)~~(d) ~~A~~ a minor who needs emergency care~~,~~ including transfusions~~,~~ without which his health will be jeopardized. ~~The~~ If emergency care is rendered~~,~~ the parent~~,~~ parents~~,~~ or legal guardian shall be informed as soon as practical except ~~in---conditions~~ under the circumstances mentioned in ~~subsections-(1)~~~~,~~-~~(2)~~~~,~~-~~(3)~~~~,~~--~~or--(4)--of--this--section~~ THIS SUBSECTION (1)~~;~~ ~~or~~

~~(5)~~(2) A minor who has had a child may give effective consent to health service for his child~~;~~ ~~or~~

~~(6)~~(3) A minor may give consent for health care for his spouse if his spouse is unable to give consent by reason of physical or mental incapacity."

Section 24. Section 69-6106~~,~~ R.C.M. 1947~~,~~ is amended to read as follows:

"69-6106. ~~Consent-of-minor-to-psychiatric~~ Psychiatric or psychological counseling ~~valid~~ under urgent circumstances. ~~The~~ When executed by a minor~~,~~ the consent to the providing of psychiatric or psychological counseling by a physician or psychologist licensed to practice in this state~~,~~ under circumstances ~~where~~ when the need for such counseling is urgent in the opinion of the physician or psychologist involved~~,~~ because of danger to the life~~,~~ safety~~,~~ or property of a minor or of other person or persons~~,~~ and the consent of the spouse~~,~~ parent~~,~~ custodian~~,~~ or guardian of the ~~said~~ minor cannot be obtained within a reasonable time to offset the ~~said~~ danger to life or safety~~,~~ ~~when--executed--by--the--said--minor~~ shall be as valid and binding as if the ~~said~~ minor ~~has~~ had achieved ~~his--or--her~~ majority~~,~~ ~~that~~ That is~~,~~ such minor ~~shall-be-deemed-to-have-and-shall-have~~ has the same legal capacity to act~~,~~ and the same legal obligations with regard to the giving of such consent~~,~~ as a person of full legal age and capacity~~,~~ ~~the~~

~~infancy--of--said--minor--and-any-contrary-provisions-of-law notwithstanding~~, and such consent ~~shall~~ may not be subject to later disaffirmance by reason of such minority~~, and the~~. The consent of no other person or persons (including, but not limited to a spouse, parent, custodian, or guardian) ~~shall be~~ is necessary in order to authorize the psychiatric or psychological counseling ~~to~~ of such minor~~, provided, however, that~~. However, no parent ~~shall~~ may be obligated for the cost of such counseling without his consent."

Section 25. Repealer. Sections 10-207, 10-208, 10-209, and 10-210, R.C.M. 1947, are repealed.

-End-